

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL RAY VILLICANA, JR.

Petitioner,

Case No. 1:06-CV-96

v.

HON. ROBERT HOLMES BELL

BLAINE LAFLER,

Respondent.

_____ /

**ORDER DENYING PETITION
FOR WRIT OF HABEAS CORPUS**

Petitioner Michael Ray Villicana, Jr. has filed objections to the Magistrate Judge's January 7, 2009, Report and Recommendation ("R&R") recommending that Petitioner's § 2254 petition for writ of habeas corpus be denied. This Court is required to make a *de novo* review upon the record of those portions of the R&R to which specific objections have been made. 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). Although the Magistrate Judge's R&R is reviewed *de novo*, this Court must review the state court proceedings consistent with the standards set forth in 28 U.S.C. § 2254.

Petitioner's objections to the R&R are based upon his contention that the trial court denied him his Sixth Amendment right to confrontation when it refused to admit into evidence and allow cross-examination on a 2001 Report from the Family Independence Agency ("FIA").

The only issue raised in petitioner's habeas petition is whether the trial judge denied petitioner his right to confront and cross-examine the witnesses against him "by refusing to allow him to question the complainant [his daughter] about a specific incident of untruthfulness – her false claim to classmates that she was pregnant." (Dkt. No. 1, § 2254 Pet. ¶ 12, and Att. C.)

The issue raised in Petitioner's objections to the R&R was not raised in his § 2254 petition. The Magistrate Judge never had the opportunity to consider this issue. Absent compelling reasons, the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, "does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate." *Murr v. United States*, 200 F.3d 895, 902 n.1 (6th Cir. 2000). Issues raised for the first time in objections to a magistrate judge's report and recommendation are deemed waived. *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998) (citing *Marshall v. C hater*, 75 F.3d 1421, 1426-27 (10th Cir. 1996)). Because Petitioner failed to raise his claim regarding the 2001 FIA report before the magistrate judge, he has waived this claim.

In addition, the issue raised in Petitioner's objections to the R&R is not reviewable because Petitioner did not fairly present this claim to the state courts and exhaust his state court remedies. 28 U.S.C. § 2254(b)(1)(A); *Whiting v. Burt*, 395 F.3d 602, 612-13 (6th Cir. 2005). Accordingly,

IT IS HEREBY ORDERED that Petitioner's objections to the Report and Recommendation of the Magistrate Judge (Dkt. No. 34) are **DENIED**.

IT IS FURTHER ORDERED that the January 7, 2009, Report and Recommendation of the Magistrate Judge (Dkt. No. 32) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's petition for writ of habeas corpus (Dkt. No. 1) is **DENIED**.

Dated: February 19, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE